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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CNA INSURANCE COMPANY LIMITED,

Plaintiff,

Index No. 07 CIVIL
9919 (BSJ)

-against-

MERCER TRANSPORTATION CO. INC.

Defendant.

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Plaintiff, CNA Insurance Company Limited (hereinafter "CNA"), by and through its attorneys, Hill Rivkins & Hayden LLP, complaining of the above-named defendant, Mercer Transportation Co. Inc. (hereinafter "Mercer") alleges upon information and belief, as follows:

1. The plaintiff is a corporation incorporated under the laws of the United Kingdom with a place of business at International House, 1 St. Katharine's Way, London E1W 1UN, England and at all relevant times hereto was a cargo underwriter who by virtue of a payment to its insured, Pro-Form Plastics, Inc., (hereinafter "Pro-Form") is the subrogated underwriter for Pro-Form.

2. Mercer is a corporation, which upon information and belief, is incorporated under the laws of the State of Kentucky, with its primary offices and headquarters located at 1128 W. Main Street, Louisville, Kentucky, and is a motor common carrier governed

by the Interstate Commerce Commission Termination Act 49 U.S.C. §10101, et seq., and 49 U.S.C. §14706 and at all relevant times hereto did business as a common carrier in New York.

3. On or about July 1, 2006, at Port Newark, New Jersey, there was delivered to Mercer a shipment, ex the M.V. CMA CGM MANET, consisting of a ceramic oven in good order and condition which defendant Mercer accepted and agreed to carry by truck to Crotherville, Indiana.

4. The ceramic oven was delivered at destination in a damaged condition.

5. By reason of the premises, the Defendant was negligent and careless in its handling of Plaintiff's cargo, violated its duties and obligations as a common carrier under 49 U.S.C.A. §14706, and as bailee of the cargo and was otherwise at fault.

6. Plaintiff was the subrogee of the consignee and owner of said shipment and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

7. Plaintiff and its subrogor have duly performed all duties and obligations on its part to be performed.

8. By reason of the premises, Plaintiff has sustained damages as nearly as same can now be estimated, no part of which has been paid, although duly demanded, in the total amount of \$100,000.00.

WHEREFORE, Plaintiff respectfully requests that

1. Due process of law be issued against the Defendant;

2. Judgment be entered in favor of Plaintiff against Defendant in the amount of \$100,000.00, together with interest, costs and attorney's fees.

3. Plaintiff has such other and further relief as may be just and proper under the circumstances.

Dated: New York, New York
November 8, 2007

HILL RIVKINS & HAYDEN LLP
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